

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ACLU OF TENNESSEE, Inc.)
)
 Intervening Plaintiff,)
 v.) No. 2:17-cv-02120-jpm-DKV
)
 THE CITY OF MEMPHIS,)
)
 Defendant.)

**THE CITY’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
QUARTERLY SUBMISSION OF SEARCH TERMS**

The Defendant, the City of Memphis ("the City"), files this Motion For Extension of Time to File Quarterly Submission of Search Terms. In support, the City states as follows:

I. Background

Pursuant to the Court’s October 27, 2018 Opinion and Order the Court imposed certain sanctions on the Defendant, the City of Memphis (“the City”) and ordered compliance by a date certain. (ECF No. 151.)

Under the Order, the Court required, in part, that:

5) The City shall maintain a list of all search terms entered into social media collators or otherwise used by MPD officers collecting information on social media while on duty. This list shall be filed under seal every three months until the Court orders otherwise. The first filing shall be submitted no later than January 14, 2019 and shall reflect all such social media searches conducted from November 1, 2018 through December 31, 2018.

(ECF No. 151, PageID 6275.)

In January 2019, the City began collecting search terms from certain MDP investigative units and submitting them to the Court under seal every quarter beginning in January 2019 and ending July 2020.

On August 19, 2020, the Court ordered the City to disclose all work-related social media search terms used by all MPD officers, including the officers from the Multi-Agency Gang Unit (“MGU”), the Organized Crime Unit (“OCU”), and the Internet Crimes Against Children (“ICAC”) divisions, under seal, as part of its quarterly filings. (ECF No. 363, PageID 12306.) The Court also ordered the City to supplement its previous filings with the work-related search terms since January 2019 from the officers it had not previously reported. (*Id.*)

On November 3, 2020, the City submitted the work-related search terms used by every MPD officer during the period from January 1, 2019 through September 30, 2020 under seal. (ECF No. 383.)

II. The recent security breach of the Court’s CM/ECF system.

On January 6, 2021, the City learned that the Judicial Conference of the United States issued a Memorandum notifying the federal court system of a significant cybersecurity breach of the Court’s Case Management/Electronic Case Filing (CM/ECF) system.

On January 22, 2021, the Court entered Administrative Order No. 2021-03, which instructed litigants seeking designation of a particular document as an HSD to file a motion seeking such designation and to submit a proposed order.

In response to Administrative Order No. 2021-03, on January 28, 2021, the City filed an unopposed Motion to Have Its Quarterly Search Term Submissions Treated as HSDs and Removed from the CM/ECF System. (ECF No. 393.) In the Motion, the City explained why its search term submissions should be considered HSDs. The search terms used by MPD, and in particular, certain investigative units within the MPD, include names and aliases of targets of ongoing criminal investigations and their associates. The disclosure of this highly confidential information could destroy long-running, ongoing investigations into violent crime and drug

enterprises and compromise the safety of undercover officers and informants, whose identities may be implicitly revealed by the search terms. The Court has not yet ruled on the City's Motion.

On February 3, 2021, the Court vacated Administrative Order No. 2021-03 and replaced it with Administrative Order No. 2021-05. Relevant to the City's search term submissions, Administrative Order No. 2021-05 states that a document may be deemed an HSD if it involves "sensitive on-going law enforcement investigations."

III. The City's February 5, 2021 Quarterly Search Term Submission

On February 5, 2021, the City filed its Response in Compliance with Order on Search Term Submissions. (ECF No. 395.) Out of an abundance of caution, the City separately manually filed the search terms as HSDs with the Clerk's office pursuant to the procedures in Administrative Order No. 2021-05. The City also served copies of the search terms to the Monitor and the ACLU-TN on encrypted hard drives via overnight delivery service.

IV. This Quarter's Search Term Submission

Because the Court has not yet ruled on the City's Motion to Have Its Search Term Submissions Treated as HSD's (ECF No. 393), and out of an abundance of caution, the City again sought to submit this Quarter's submission of search terms as if the Court will treat them as HSDs.

On April 14, 2021, counsel for the City, Jennie Silk, spoke with the Clerk's office who informed her that the Clerk's office was not permitted to accept HSDs unless the Court has entered an Order deeming the relevant documents to be HSDs.

Counsel for the City then emailed Case Manager, Jeffrey Sample, for further guidance. Mr. Sample advised the City to file a motion for extension of time to file this Quarter's search

terms until the Court rules on the pending HSD motion.

Accordingly, the City respectfully moves the Court for an extension of time to file this Quarter's submission of search terms until the Court rules on the City's pending Motion to Have Its Search Term Submissions Treated as HSDs. (ECF No. 393.) The City notes that the search terms have been collected and are available for immediate submission or review.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Bruce McMullen

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CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a) (B), on April 14, 2021, counsel for the city, Jennie Silk, conferred with counsel for Intervening Plaintiff, Thomas Castelli, by email regarding the relief sought in this Motion. The ACLU-TN does not oppose the relief the City seeks with this Motion. Counsel for the City also conferred with the Monitoring team, who stated that they do not need to view the search terms until the Court rules on the pending Motion.

s/ Bruce McMullen

Bruce McMullen

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2021, the foregoing document will be served by the Court's CM/ECF system to:

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